U.S. Patent Application Serial No. 10/806,767
Title: Multi-Source Programming Guide Apparatus and Method
Applicant(s): Nishikawa et al.; Filing Date: March 23, 2004
Document: Response to Final Office Action dated April 6, 2010

**Attorney Docket No. 81235 7114**

## REMARKS/ARGUMENTS

The Applicants hereby thank the Examiner for the observations in the outstanding Office Action, for withdrawing Shaya (US 2002/0161664) as a cited reference, and for the December 3, 2009, telephonic acknowledgement of the intent to withdraw the outstanding objection to the Specification. Claim 1, 5, 7, 8, 9, 13, 18, 19, and 20 are herein amended to better encompass the full scope and breadth of the present invention, notwithstanding the Applicants' belief that the Claims would have been allowable as originally filed. The Applicants respectfully assert that no claim has been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* (Fed.Cir. November 29, 2000). Therefore, reconsideration of the present application in light of the foregoing amendment and these remarks is respectfully requested. However, should any remaining issues be outstanding, the Examiner is respectfully requested to telephone Mr. Thomas F. Lebens at (805) 781-2865 so that such issues may be expeditiously resolved.

### I.     Rejection of Claim 8 under 35 U.S.C. § 112, second paragraph

Claim 8 stands rejected, under 35 U.S.C. § 112, second paragraph, on the ground that it lacks antecedent basis for the term "content." The Applicants respectfully traverse these grounds for rejection on this basis.

Independent Claims 1, 8, and 13 are herein amended by inserting the phrase "plurality of discrete selectable items of audio/video" before the term "content" which should clarify which content is recited. Dependent Claim 5, 9, 18, and 19 are herein amended to conform with the amendments to their respective base claims and any intervening claims.

Thus, the Applicants respectfully submit that Claim 8 overcomes this ground for rejection on this basis. Therefore, the Applicants respectfully request that the ground for rejection of Claim 8 on this basis is withdrawn and that Claim 8 is passed to allowance in due course.

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## II.    Rejection of Claims 1-20 under 35 U.S.C. § 103(a)

Claims 1-20 stand rejected, under 35 U.S.C. § 103(a), as being unpatentable over Sie et al. (US 2003/0233656), in view of Fries et al. (US 2004/0078807), and in further view of McCoskey et al. (US 2003/0028889). The Applicants respectfully traverse these grounds for rejection on this basis.

Independent Claims 1, 8, and 13 are herein generally amended by deleting "at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword" from before "viewer identification[,]" and by inserting "a content nature uniqueness" after "recommendation based on[.]" Illustrative dependent Claims 18-20 are herein generally amended by inserting "wherein the enhanced suggestion engine providing step comprises providing the enhanced suggestion for making at least one recommendation based on at least one further parameter selected from a group consisting essentially of a viewer identification and a keyword." These amendments are fully supported by the priority document (US 60/520,752, p. 10, ll. 18-23).

With respect to the primary cited reference, Sie merely discloses: "... generating a personalized menu promoting other video programs available from a video content delivery system is disclosed. The video content delivery system provides a plurality of channels of video content simultaneously. In one step, it is determined that a triggering event has occurred with a video content delivery conduit. First information about one or more users is gathered. The one or more users are associated with an account with the video content delivery system. Alternative video programs are determined and personalized for the one or more users based, at least in part, upon the first information. The context for the triggering event is analyzed to produce second information. A configuration of the personalized menu is determined based, at least in part, upon the second information. The personalized menu is formulated for presentment to the one or more users. The personalized menu comprises links to the alternative video programs[.]" (Abstract)

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With respect to the secondary cited reference, Fries merely discloses: "... electronic program guides and multimedia presentation devices. One implementation, described herein, provides a unified access to multiple electronic program guides (EPGs) from multiple programming and guide data sources (e.g., local broadcast, satellite broadcast, DVR, VoD, etc.). With this implementation, multiple EPGs from a variety of sources are presented in a single common user interface (UI). Therefore, the television viewer may search/browse the EPG of all sources concurrently. The scope of the exemplary e-commerce facilitation is pointed out in the appending claims." (Abstract)

With respect to the tertiary cited reference, McCoskey et al. actually discloses: "A system for searching, packaging and delivering content using an aggregator is described. The aggregator processes requests, searches, provides search results and acquires content. The aggregator, operating in a communications network, includes a request and results processing server, a search engine server coupled to the request and results processing server and a content acquisition server coupled to the request and results processing server. A request and results processing server receives a request for content, the search engine server searches for the content and the content acquisition program acquires content for delivery to the user. The request and results processing server includes a search request processor that receives information related to a user's search request and provides the information to a search results form builder that creates an electronic search request. The search request may be augmented by using a content suggestion engine to add additional search terms and descriptions to the search request. The aggregator may also include a decoder that decodes program content and program metadata from remote sources for storage at the aggregator, and an encoder that encodes content metadata and programs for delivery to the user. The aggregator may also comprise one or more crawlers, such as a content crawler, to look for program content in one or more digital communications networks." (Abstract).

Noteworthy is that the newly cited reference, McCoskey, does not teach, suggest, or motivate, either expressly or implicitly, its aggregator is being even capable of performing a **simultaneous consideration of audio/video content across a plurality of media in a plurality of data formats**. McCoskey merely discloses that the "aggregator may also comprise one or

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more crawlers, such as a content crawler, to look for program content in one or more digital communication networks" (Abstract). McCoskey never discloses that these crawlers actually perform their functions simultaneously (Paras. 92 and 97), notwithstanding the Examiner's belief that a plurality of crawlers would somehow behave in a contemporaneous manner. McCoskey never discloses that the aggregator comprises a "smart filter" per se anywhere in the reference.

Additionally, although McCoskey teaches a "content suggestion engine," nowhere does the reference ever teach, or even imply, that such "content suggestion engine" is in any way "enhanced" (Figs, 14a and 14b; Paras. 97 and 98) or that it in any way **searches and analyzes content for its unique nature as claimed in the present invention**. McCoskey also merely teaches the selection of programming in terms of "content format," not actual "data" format. Although McCoskey teaches reformatting a searched piece of content (searched on other bases), McCoskey does not teach, suggest, or motivate, any filter selection criteria based on a plurality of different sources and a plurality of different data formats in the manner of the present invention. Furthermore, the search criteria of McCoskey do not comprise two or more of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content resulting in an ability to make a recommendation based on a **content nature uniqueness.**

In contrast to the cited art, the present invention involves the following salient features, *inter alia*: "providing at least one **smart filter** for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an **enhanced suggestion engine** for making at least one **recommendation based on a content nature uniqueness and at least one parameter selected from a group consisting essentially of a viewer identification and a keyword**, the at least one smart filter providing step comprising providing **each at least one smart filter being customizable for each at least one user**, wherein the at least one **smart filter** *simultaneously considers* **content across a plurality of media**, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing

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choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of **a plurality of different sources and a plurality of different data formats[.]"**

Accordingly, the Applicants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate, in any other manner, the combination of elements and limitations, *inter alia*, as recited by herein amended independent Claims 1, 8, and 13, respectively reciting:

1. A method of selecting content by way of a multi-source interactive programming guide apparatus, comprising the steps of:

providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content,

wherein the plurality of characterizing descriptors comprises at least one element selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the plurality of discrete selectable items of audio/video content, information pertaining to the content, an indication of a bearer medium, a sample of the plurality of discrete selectable items of audio/video content, a promotional sample of the plurality of discrete selectable items of audio/video content, a previously prepared trailer, and a preview of the plurality of discrete selectable items of audio/video content, and

wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;

**providing at least one smart filter for facilitating determination of a particular one of the plurality of discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on a content nature uniqueness, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;**

providing at least one selection criterion;

applying the at least one selection criterion with respect to the plurality of characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content;

displaying programming guide information comprising information regarding at least a portion of the resultant selection;

supporting a programming guide navigation;

reviewing and browsing the information regarding the at least one portion of the resultant selection;

if selecting a particular item of the plurality of discrete selectable items, providing a

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selection response; and

if not selecting a particular item of the plurality of discrete selectable items, returning to the supporting step. [Emphasis added.]

8.     An interactive multi-source programming guide apparatus, comprising:

a data processing unit comprising at least one element selected from a group consisting essentially of a fixed-purpose dedicated platform, a partially-programmable platform, a cable, and a satellite set-top box;

a plurality of characterizing descriptors, each of which individually correspond to a plurality of discrete selectable items of audio/video content,

wherein the plurality of characterizing descriptors comprises at least one element selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the plurality of discrete selectable items of audio/video content, information pertaining to the plurality of discrete selectable items of audio/video content, an indication of a bearer medium, a sample of the plurality of discrete selectable items of audio/video content, a promotional sample of the plurality of discrete selectable items of audio/video content, a previously prepared trailer, and a preview of the plurality of discrete selectable items of audio/video content, and

wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, a data format, and at least one selection criterion;

**at least one smart filter for facilitating determination of a particular one of the plurality of discrete selectable items of data, the at least one smart filter comprising an enhanced suggestion engine for making at least one recommendation based on a content nature uniqueness, each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, whereby a coordinated joint display, comprising a plurality of integrated results, is provided, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats; and**

a control circuitry adapted to:

apply the at least one selection criterion with respect to the plurality of characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content;

display programming guide information comprising information regarding at least a portion of the resultant selection; and

a support programming guide navigation,

wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation. [Emphasis added.]

13.     A method of providing an interactive multi-source programming guide apparatus, comprising the steps of:

providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs,

wherein the plurality of characterizing descriptors comprises at least one element selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the plurality of discrete selectable items of audio/video content, information pertaining to the plurality of discrete selectable items of audio/video content, an indication of a bearer medium, a sample of the plurality of discrete selectable items of audio/video content, a promotional sample of

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the plurality of discrete selectable items of audio/video content, a previously prepared trailer, and a preview of the plurality of discrete selectable items of audio/video content, and

wherein a first plurality of the discrete selectable audio/visual programs differ from a second plurality of the discrete selectable audio/visual programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;

**providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on a content nature uniqueness, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;**

providing at least one selection criterion that corresponds to a given individual;

applying the at least one selection criterion with respect to the plurality of characterizing descriptors of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs to provide a resultant selection of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs;

displaying programming guide information comprising information regarding at least a portion of the resultant selection; and

providing a support programming guide navigation. [Emphasis added.]

Consequently, Claims 2-7, 9-12, and 14-20 now respectively subsume the limitations of herein amended Claims 1, 8, and 13 by dependency thereto.

Thus, the Applicants respectfully submit that Claims 1-20 have not been taught, suggested, motivated, or otherwise obviated, in any other manner, by the cited art. Therefore, the Applicants respectfully request that the grounds for rejection of Claims 1-20 on this basis are withdrawn and that Claims 1-20 are passed to allowance in due course.

## III. Application Pending More than Five Years under MPEP §§ 707.02 and 708.01

Further, the Applicants respectfully submit that the present application has now been pending for over five years, i.e., **over six (6) years** as of the original filing date, **March 23, 2004**, of the present application. The relevant rules are as follows (MPEP §§ 707.02, 708.01):

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**707.02 Applications Up for Third Action and 5-Year Applications[R-2]**

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office Action with a view to finally concluding its prosecution.

**Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution.**

**In order to accomplish this result, the application is to be considered "special" by the examiner.**

**708.01 List of Special Cases [R-2]**
**37 CFR 1.102 Advancement of examination.**

The following is a list of special cases (those which are advanced out of turn for examination):

(A) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and when for that reason the head of some department of the Government requests immediate action and the *>Director of the USPTO< so orders (37 CFR 1.102).

(B) Applications made special as a result of a petition. (See MPEP § 708.02.)
Subject alone to diligent prosecution by the applicant, an application for patent that has once been made special and advanced out of turn for examination by reason of a ruling made in that particular case (by the Director of the USPTO or a Commissioner) will continue to be special throughout its entire course of prosecution in the U.S. Patent and Trademark Office, including appeal, if any, to the Board of Patent Appeals and Interferences.

(C) Applications for reissues, particularly those involved in stayed litigation (37 CFR 1.176).

(D) Applications remanded by an appellate tribunal for further action.

(E) An application, once taken up for action by an examiner according to its effective filing date, should be treated as special by an examiner, art unit or Technology Center to which it may subsequently be transferred; exemplary situations include new cases transferred as the result of a telephone election and cases transferred as the result of a timely reply to any official action.

(F) Applications which appear to interfere with other applications previously considered and found to be allowable, or which will be placed in interference with an unexpired patent or patents.

(G) Applications ready for allowance, or ready for allowance except as to formal matters.

(H) Applications which are in condition for final rejection.

**(I) Applications pending more than 5 years, including those which, by relation to a prior United States application, have an effective pendency of more than 5 years. See MPEP § 707.02.**

(J) Reexamination proceedings, MPEP § 2261.

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Thus, the Applicants respectfully submit that, since the present application has now been pending for over six (6) years as of the original filing date of the present application, the present application should be treated as "special" by the examiner under MPEP §§ 707.02 and 708.01 and that examination of the present application should be advanced. Therefore, the Applicants respectfully request that the grounds for rejection of the Claims on the foregoing bases are withdrawn and that remaining Claims are passed to allowance in due course.

## CONCLUSION

Accordingly, Claim 1, 5, 7, 8, 9, 13, 18, 19, and 20 have been herein amended to better encompass the full scope and breadth of the present invention, notwithstanding the Applicants' belief that the Claims would have been allowable as originally filed as well as previously amended. The Applicants respectfully reassert that no claim has been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* (Fed.Cir. November 29, 2000). Therefore, reconsideration of the present application in light of the foregoing amendment and these remarks is respectfully requested. *The Examiner is further cordially invited to telephone Mr. Thomas F. Lebens for any reason which would advance allowance of the pending claims.* In the event that any additional fees become due or payable, the Examiner is authorized to charge USPTO Deposit Account No. 06-1135 accordingly.

Respectfully submitted,

Dated: 6/7/2010

May Lin DeHaan
Reg. No. 42,472
Attorney for Applicant(s)

Address all correspondence to:
Thomas F. Lebens
FITCH, EVEN, TABIN & FLANNERY, LLP
120 South LaSalle Street
Suite 1600
Chicago, IL 60603
Direct telephone inquiries to:
Thomas F. Lebens
(805) 781-2865
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